

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 09-91

KAREN WRIGHT

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered June 17, 2009

APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT,
[NO. JV-04-76]

HONORABLE TERRY SULLIVAN,
JUDGE

AFFIRMED; MOTION TO BE
RELIEVED GRANTED

COURTNEY HUDSON HENRY, Judge

By an order entered on November 21, 2008, the Circuit Court of Conway County terminated the parental rights of appellant Karen Wright to her five children, S.W., born on July 15, 1997; E.W., born on November 1, 1998; L.W., born on October 5, 1999; J.W., born on September 27, 2001; and C.P., born on June 12, 2006. On appeal, appellant's attorney has filed a motion to be relieved as counsel pursuant to *Linker-Flores v. Arkansas Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 6-9(i), asserting that there are no issues of arguable merit to support an appeal. Counsel's motion is accompanied by a brief listing all adverse rulings made at the termination hearing and explaining why there is no meritorious ground for reversal. The clerk of this court sent a copy of counsel's brief and

motion to appellant, informing her that she had the right to file pro se points for reversal. Appellant did not submit any pro se points. Based on our review, we agree that the appeal is wholly without merit. Accordingly, we affirm the termination order and grant counsel's motion to be relieved.

The family's involvement with appellee, the Arkansas Department of Human Services (DHS), began in July 2003 when DHS opened a protective services case for environmental neglect and inadequate supervision. In October 2004, DHS opened another protective services case based on allegations that Raymond Wright, the father of S.W., E.W., L.W., and J.W., was a sex offender.¹ That same month, DHS filed a petition for emergency custody because appellant did not have a home and failed to pick up two of the children from school. On December 16, 2004, the trial court declared that the four children were dependent-neglected and that returning the children to appellant's custody was contrary to their best interest.

Throughout the four-year pendency of this case, appellant remained only in partial compliance with the case plan. Nevertheless, to achieve reunification, the trial court formed a plan to return the children home gradually, one at a time. The court authorized a trial placement of J.W. at home in January 2006. In June 2006, appellant gave birth to C.P., whose father is Christopher Pearson and who resided with appellant. In subsequent review orders, the court noted that appellant was making no progress and that she was inconsistent in

¹ The trial court terminated Mr. Wright's parental rights in September 2006.

attending counseling sessions. The court also found that she had no job, no driver's license, and no means of transportation. In March 2007, the trial court authorized DHS to proceed with the termination of appellant's parental rights to S.W., E.W., and L.W. However, the court changed course one month later and continued the goal of reunification.

In June 2007, the trial court authorized the return of S.W. to the home. In November 2007 and January 2008, the court issued warnings to appellant that the children would be removed from her custody if she again failed to follow through with services for the children. On February 1, 2008, DHS filed a petition for emergency custody of S.W., J.W., and C.P. based on domestic abuse and environmental neglect. In the affidavit supporting the petition, DHS alleged that Mr. Pearson killed a kitten in front of J.W. and that he physically and verbally abused appellant and the children. The home was unkempt and had holes in the walls and ceiling, allowing cold air inside. The affiant observed roaches crawling on the walls, in the refrigerator, and in J.W.'s bedding. In addition, appellant was not giving J.W. her medication. On February 25, 2008, the trial court issued an order finding that the children were dependent-neglected. After a permanency planning hearing, DHS filed a petition to terminate appellant's parental rights in all five children.

At the termination hearing, the trial court heard testimony that appellant resisted counseling and that she made no progress during the few sessions she attended. Her counselor stated that appellant lacked any insight as to why the children were removed from her custody. Also, appellant remained unemployed and was not diligent in seeking work, and she had not

obtained a driver's license as ordered. Pearson, while intoxicated, wrecked the family vehicle, leaving him and appellant without transportation. Appellant failed to enroll J.W. in Head Start and failed to provide J.W. with counseling. Testimony revealed that, although the home was clean the week before the hearing, appellant typically made improvements just prior to court hearings, only to regress afterwards.

At the conclusion of the termination hearing, the trial court found that termination was in the children's best interest. Ark. Code Ann. § 9-27-241(b)(3)(A) (Repl. 2008). The trial court found that the older four children had been adjudicated dependent-neglected, had remained out of the home for more than twelve months, and that, despite efforts by DHS to correct the conditions that caused removal, appellant had not remedied those conditions. Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a). With respect to all of the children, the trial court also found that other factors arose subsequent to the filing of the original petition which demonstrated that returning custody to appellant was contrary to the children's health, safety and welfare and that, despite the offer of services, appellant manifested an incapacity or indifference to remedy those subsequent issues. Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a). In light of this record, we conclude that an appeal from these findings would be wholly frivolous.

The only other adverse ruling was the trial court's denial of appellant's motion to dismiss made during the termination hearing. In this motion, appellant alleged that DHS's petition to terminate parental rights was conclusory and lacked any factual basis. The trial

court denied the motion, finding that it was untimely in that Wright filed an answer to the petition and did not raise the issue until trial. The trial court did not err in its ruling. *White v. Welsh*, 327 Ark. 465, 939 S.W.2d 299 (1997) (holding that this argument is waived by filing an answer).

Affirmed; motion granted.

PITTMAN and MARSHALL, JJ., agree.